document a first information report is, it can never be treated as a piece of substantive evidence and the fact that no first information report was made is not in itself a ground for throwing out a case. The powers of the police to investigate do not depend solely on Chapter XIII of the Criminal Procedure Code. The duties of a police officer as set out in section 20 of the Police Act, 1967 include apprehending all persons whom he is by law authorized to apprehend and these duties are amplified in section 23 of the Criminal Procedure Code. Most of these duties imply a power to investigate whether there has been an information under section 107 of the Criminal Procedure Code or not. (See *Vellasamy v. Rex*[1]).

In the present case, a first information report was in fact made, but it was made orally. The inspector to whom it was made quite clearly thought that if any time was wasted in reducing the report into writing, reading it back to the informant and getting his signature, the accused might disappear from the canteen before any steps could be taken to apprehend him. Quite rightly, therefore, he took immediate action to have two detectives sent with P.W.1. When P.W.1 returned to the police station after the accused had been arrested, his report was formally reduced into writing. As investigations had already commenced before such report was reduced into writing, it became inadmissible in evidence as a first information report but it was still possible for it to be used to impeach the credit of the person making it under section 113(ii) of the Criminal Procedure Code, so that it could not be said that the accused was deprived wholly of the opportunity to cross-examine P.W.1 on it.

It is true that generally the absence of a first information report casts a cloud of suspicion and tends to weaken the prosecution case. But as was pointed out by their Lordships of the Privy Council in *Emperor v. Khwaja Nazir Ahmad*,[2] the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. Lord Porter in delivering the judgment of the Privy Council in that case went on to say:—

"No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognisable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged . . . In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so."

As regards corroboration, there is neither authority nor principle in support of the proposition that the evidence of a witness cannot be corroborated by his employee or relative or by any person who may be said to be an interested party. There is certainly no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances (*Balasingham v. Public Prosecutor*[3]).

As I have stated, the first information report, having been reduced into writing after the investigations had commenced, was not admissible in evidence. Its non-production therefore could not possibly raise any presumption under section 114(g) of the Evidence Ordinance.

The prosecution, to my mind, had produced evidence which, if unrebutted, warranted a conviction of the accused, particularly as the learned magistrate nowhere stated that he did not believe the evidence of P.W.1 and that of the other witnesses for the prosecution. It is true that Lim Kee Hoon and Zakaria were not called by the prosecution, but they were made available for the defence. There was thus a *prima facie* case for the accused to answer.

I would allow the appeal, set aside the order of acquittal and discharge and order that the respondent be tried before another magistrate.

Appeal allowed. Order of acquittal and discharge set aside. Re-trial ordered.

Solicitors: *Skrine & Co.*

WONG AH MEE v. PUBLIC PROSECUTOR

[A.Cr. (Pawan Ahmad J.) June 11, 1969]

[Ipoh — Criminal Appeal No. 21 of 1969]

Internal Security — Prohibited document — Possession without lawful excuse — Proof that document is a prohibited document — Internal Security Act, 1960, s. 22.

The appellant had been convicted for possession of a prohibited document. The facts were that the police raided the appellant's toyshop and found toy lorries with the words "Self-Reliance and Arduous Struggle" printed on them. It was contended on behalf of the prosecution that these words are quotations from the publication "Quotations from Chairman Mao Tse-Tung" which was a prohibited document. On appeal it was argued that the words are not quotations from the prohibited document. It appeared that the words appear only as a heading in the publication.

Held, allowing the appeal: the headings by themselves are neither quotations from the publication nor extracts therefrom and therefore the prosecution in this case had failed to adduce sufficient evidence which unrebutted would have warranted a conviction and the learned magistrate should not have called on the appellant for her defence and should have acquitted her.

MAGISTRATE'S CRIMINAL APPEAL

Tan Sun Cheong (*Soo Wai Sun* with him) for the appellant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Pawan Ahmad J. (delivering oral judgment): This is an appeal against the whole decision of the magistrate's court, Kampar, given on 8th March 1969 whereby the appellant was convicted and sentenced to one day's imprisonment and in addition fined $350; in default two months' imprisonment, on the following charge:—

"That you on 10.12.68 at about 12.10 p.m. at shophouse No. 79, Jalan Idris, Kampar, in the District of Kinta, in the State of Perak, without lawful excuse did have in your possession document, to wit, Toy Metal Lorries with quotations from Chairman Mao Tse-Tung entitled 'Self-Reliance and Arduous Struggle' the possession of which is prohibited by an order under section 22 of the Internal Security Act No. 18 of 1960 *vide* P.U. 295 dated 6.7.67 and L.N. 231/67 and that you have thereby committed an offence punishable under section 25(1) of the said Act."

Briefly, the case for the prosecution is that as a result of information received Chief Inspector Ali Shah (P.W. 1) in the company of D.P.C. 11215 raided a toy-shop at No. 79, Jalan Idris, Kampar. Throughout the raid the appellant was in the shop. In the course of a search made in the shop, P.W.1 found two toy lorries (P.2 *A* and *B*) with the words, "Self-Reliance and Arduous Struggle" printed on them. It is the contention of the prosecution that these words are quotations from the publication entitled "Quotations from Chairman Mao Tse-Tung" prohibited by an order made under section 22 of the Internal Security Act 1960. P.2 *A* and *B* were displayed for sale together with other toys. P.W.1 then took possession of P.2 *A* and *B* and arrested the appellant and subsequently had her charged in court.

At the close of the prosecution case the learned magistrate was satisfied that a *prima facie* case had been made out and so he called upon the appellant to make her defence. She, however, elected to remain silent. The learned magistrate thereupon convicted her on the charge.

Several grounds of appeal have now been raised by the appellant and among them is that the words, "Self-Reliance and Arduous Struggle" are not quotations from the prohibited publication entitled "Quotations from Chairman Mao Tse-Tung" and therefore the prosecution had failed to make out a *prima facie* case and the appellant should not have been called to make her defence.

In the course of the trial the prosecution produced a copy of the prohibited publication printed in the English language entitled "Quotations from Chairman Mao Tse-Tung" (P.5). On a perusal of this publication it is found that the words "Self-Reliance and Arduous Struggle" appear only at page 194 and as heading of Chapter XXI. This book contains numerous quotations of Chairman Mao Tse-Tung and they have been grouped under 33 Chapters by the publisher. For example, the heading of Chapter XXIII is "Investigation and Study" and the heading of Chapter XXV is "Unity". In my view the headings of Chapters in P.5 by themselves are neither quotations from Chairman Mao Tse-Tung nor extracts therefrom.

It was also the contention of the prosecution that as the whole book (P.5) is a prohibited publication the words, "Self-Reliance and Arduous Struggle" being the heading of Chapter XXI of this publication are also prohibited. On this issue, P.W.2 a police-clerk-cum-qualified-interpreter on cross-examination stated that the words, "Self-Reliance and Arduous Struggle" are very commonly used by the Chinese and these words are also a Chinese proverb. It could therefore be purely coincidental that the words printed on P.2 *A* and *B* and the heading of Chapter XXI of P.5 are the same. Further, the appellant in her cautioned statement also stated that she purchased P.2 *A* and *B* together with several other toys from a travelling salesman and that she had no knowledge that the printed words on P.2 *A* and *B* were taken from P.5.

In these circumstances, it is apparent that the prosecution had failed to adduce sufficient evidence which, if unrebutted, would warrant a conviction at the close of the prosecution case. The learned magistrate should not therefore have called on the appellant for her defence. The appeal is hereby allowed; conviction and sentence are set aside; and any fine if paid is to be refunded.

Appeal allowed; conviction and sentence set aside.

Solicitors: *Ngan & Tan.*